IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 395 of 2005

JAGDISH CHANDRA SHARMA
V/S
STATE O RAJ & ORS

Mr. RR CHACHA, for the appellant / petitioner

Mr. HR SONI, AGA, for the respondent

Date of Order : 27.9.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant, and perused the record of the learned courts below, as was requisitioned.

Both the learned courts below have dismissed the plaintiff appellant's suit for injunction, interalia seeking to restrain the defendants from interfering with the plaintiff's mining operations, on the area for which the mining rights were granted, and on expiry of the original grant, he had applied for renewal in the year 1989.

It is contended by the learned counsel for the appellant, that the appellant was not given sufficient

opportunity to lead evidence in rebuttal, inasmuch as, though his application for allowing him to lead evidence in rebuttal was allowed, but then, it being not possible for him to produce official records, he did file PF and notices for summoning the witnesses alongwith record, but then, vide order dated 22.8.2000, the summoning of the witness has been closed.

I have considered the submission, and find, that the plaintiff's evidence was closed on 15.2.97, reserving the right of rebuttal, then the defendant's evidence was closed on 21.10.97, and the case was fixed for final arguments on 22.11.97. It is, in this background, that the application for giving opportunity to lead evidence in rebuttal was filed, as late as on 8.8.2000, and the learned trial Court, vide separate order dated 10.8.2000 considered that when the defendant's evidence was closed on 21.10.97, the plaintiff did not express his desire to lead evidence, and the case was fixed for final arguments on 22.11.97. Thereafter number of adjournments had been given, dates whereof had been catalogued, and during all this period, the plaintiff never expressed his desire to produce evidence in rebuttal. Then after the application for amendment was dismissed with costs of Rs.500/-, and the case was fixed for final arguments, this application has been filed, however showing magnanimity, the application was allowed with a cost of Rs.1000/-, and it was ordered

that one opportunity be given to the plaintiff to produce all his witnesses, and get them examined. With this order, the case was fixed for plaintiff's evidence for rebuttal on 19.8.2000. It is in this background, that application was filed by the appellant on 18.8.2000, giving the list of witnesses to be examined in rebuttal, and documents to be summoned from the witnesses, and process fee and notices were also filed on 18.8.2000. Obviously, this was not the order of the Court, as in the order dated 10.8.2000, the plaintiff was directed to himself keep the witnesses present and get them examined. In that view of the matter even if the plaintiff wanted the assistance of the court to procure attendance of the witnesses, then steps should have been taken immediately, instead of relying on the claim of being entitled to submit requisites within seven days, which in view of the order dated 10.8.2000 was not available. In such circumstances, the learned trial Court considered the application dated 18.8.2000, and dismissed it vide order dated 22.8.2000, inter-alia considering, that the earlier order clearly specified that the plaintiff should himself get the witnesses present, and the application was dismissed.

In my view, this order dated 22.8.2000 does not require any interference, and it cannot be said that the appellant did not get sufficient opportunity to lead evidence in rebuttal.

It was then contended that the order of refusal of the application for renewal, which is pleaded to have been passed on 30.4.90, was not produced in the trial Court, and was produced only after the plaintiff's evidence was over, i.e. it was filed on 20.8.97, alongwith application under Order 13 Rule 2, which was allowed vide order dated 28.8.97 on cost of Rs.200/-, and therefore, it is contended that the order dated 30.4.90 was never passed, it was never communicated to the appellant, and rather is a subsequent manipulation, after the plaintiff's evidence was over, and thus, the plaintiff has been prejudiced.

I have considered this submission also, and find, that in para 2 of the written-statement, it was clearly pleaded, that the application for renewal was dismissed vide order No.1158 dated 30.4.90, this written-statement was filed in the trial Court on 5.6.93. Then I find on record at page C/7/21, a list of documents, presented on 6.12.91, whereby two documents were produced, being dated 30.4.90 and 14.3.90, whereon there is endorsement of the learned Presiding Officer, about keeping it in the file. Then at page C/7/22, I find the copy of the said order No.1158 dated 30.4.90, a photostat copy, which again bears the endorsement of the learned Presiding Officer, about being kept on the file. Then at page C/7/23 there is a photostat copy of the judgment of this Court dated 14.3.89.

Thus, it is clear that this document was filed on record on 6.12.91 itself. It is not understood, as to why the application under Order 13 Rule 2 was filed, rather it appears that somehow the defendant remained under an impression, that it has not been filed, inasmuch as, it is alleged in the application, that by accidental omission, the document could not be filed, and therefore, was sought to be produced under Order 13 Rule 2. Of course, after the application was allowed by the learned trial Court on 28.8.97, the evidence of the defendant was led, comprising of D.W.1, who was examined on 21.10.97. What is significant to note is, that to this witness, it was not at all suggested in cross-examination either, that the order dated 30.4.90 was not communicated to the plaintiff, nor has it been suggested, that this order has been subsequently manufactured. In that view of the matter, this contention also cannot be accepted.

It was then contended that the learned trial Court has imposed a cost of Rs.1000/- under Section 35-A, even though there was no issue in that regard, nor the appellant had any opportunity of hearing.

On this contention, notice is issued to the respondent. Mr. H.R. Soni accepts the notice, and submits, that the said cost may be set aside. It is not shown that the cost has been paid so far. In view of the submission of

Mr. Soni, the part of the decree, awarding cost of Rs.1000/-, as above, by the learned trial Court, and affirmed by the learned lower appellate Court, is set aside.

Thus, the appeal is partly allowed, to the extent of setting aside the cost of Rs.1000/-, as imposed by learned trial Court, and affirmed by the learned lower appellate Court. Rest of the appeal is dismissed.

(N P GUPTA),J.

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